FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 353/2005
(Dilip Nilkanthrao Deshmukh & 3 others **VERSUS** Smt.Kausalyabai wd/o Rambhau Gawande & 2 others **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. Patil, counsel for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 26th September, 2007.

Heard the learned counsel for the appellant.

The appellants are the original plaintiffs. A suit was filed by the plaintiffs for partition and separate possession of their share in the suit property. The plaintiffs also sought a declaration that the adoption deed dated 01.12.1992 was illegal and not binding upon them. The appellants and the respondents are the descendants of one Shamrao, who died in the year 1920. The wife of Shamrao by name Salubai died in the year 1961. It is the case of the plaintiffs that after the death of Shamrao, his son Rambhau was cultivating the suit properties. It was then pleaded by the plaintiffs that after the death of Shamrao, his wife Salubai became the owner of half of the suit properties as she took properties equally with the son of Shamrao by name Rambhau. It was, therefore, pleaded by the plaintiff that after the death of Salubai, her son Rambhau and her daughters were entitled to equal shares. The plaintiff also challenged

the adoption of respondent no.2 Vaibhav by Kausalyabai and Rambhau. Smt. Kausalyabai, the widow of Rambhau, filed the written statement. The defendant no.1 denied the claim of the plaintiffs and pleaded that defendant no.2 Vaibhav was legally adopted by her. According to the defendant no.1, Salubai never became the absolute owner of any part of the suit property left behind by deceased Shamrao. It was pleaded by the defendant no.1 that after the death of Shamrao, his only son Rambhau became exclusive owner of the suit properties left behind by Shamrao, and therefore, the plaintiffs, who are the legal heirs of one of the daughters of Salubai, cannot claim partition and separate possession of their share in the suit properties.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues. After considering the evidence tendered by the parties on record, the Court held that the defendant had succeeded in proving the adoption deed dated 01.12.1992 and the adoption of defendant no.2 was valid. The trial Court then held that in view of the principle of inheritance under the Hindu Law, Salubai was not entitled to be the absolute owner of any part of the property left behind by Shamrao. It was held by the trial Court that Rambhau inherited the property left behind by Shamrao and hence, the plaintiffs' suit for partition was liable to be dismissed. The trial

Court, therefore, dismissed the suit filed by the plaintiffs for grant of declaration and partition of the suit properties. The findings recorded by the trial Court were upheld by the first appellate Court.

The findings recorded by both the Courts are based on a proper appreciation of the material evidence on record. They do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE